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October 3, 1988^C

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'88 OCT -3 P4:42

Before the Commission

OFFICE OF THE CLERK
DOCKETING & SERVICE
DIVISION

In the Matter of)
)
LONG ISLAND LIGHTING COMPANY)
)
(Shoreham Nuclear Power Station,)
Unit 1))
_____)

Docket No. 50-322-OL-3
(Emergency Planning)

SUFFOLK COUNTY, NEW YORK STATE, AND TOWN OF SOUTHAMPTON
COMMENTS CONCERNING IMMEDIATE EFFECTIVENESS REVIEW

Pursuant to 10 CFR § 2.764(f)(2)(ii), Suffolk County, New York State, and the Town of Southampton (the "Governments") submit the following comments and urge the Commission to stay the effectiveness of the Licensing Board's September 23, 1988 Concluding Initial Decision on Emergency Planning, LBP-88-24 (the "Decision"). In the Decision, a two-member majority of the Board threw the Governments out of all Shoreham proceedings and authorized the NRC Staff, after making necessary findings on remaining issues, to grant LILCO a full power operating license for Shoreham.^{1/}

The Governments recognize that the Commission's immediate effectiveness review is not intended to supplant normal appellate

^{1/} Judge Shon dissented, in a separate opinion, from the majority's decision to throw out the Governments.

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review or to prejudice the appellate process.^{2/} It is intended to provide the Commission an opportunity of its own to determine whether the circumstances require a stay.

The decision of the Board-majority requires a stay, if for no other reason than to allow the NRC's appellate processes to address the implications of:

- (1) a split decision that punishes the Governments for conduct that is lawful, a fact the Board-majority itself acknowledges;
- (2) an ad hominem decision that ascribes false motives to the Governments;
- (3) a conclusory decision that ignores the safety consequences of the Board-majority's action; and
- (4) a Board-majority that followed an agenda of its own, rather than the safety agenda established by law.

If the enormity of these factors does not provoke the Commission to stay the Decision and permit full appellate review, then Section 2.764(f) is without purpose.

^{2/} On September 27, 1988, the Governments noticed their appeal of LBP-88-24.

The Commission's criterion for determining whether to stay immediate effectiveness is "the public interest." 10 CFR § 2.764(f)(2)(i). It is in the public interest to stay the Decision for the following reasons:

- The Board-majority authorized issuance of a license only because it threw the Governments out of all Shoreham proceedings -- even those before other boards -- and then found there to be no party in the proceeding to contest issuance of the license. In fact, the Governments continue to contest issuance of a license and are prepared to litigate serious safety issues.^{3/}

- The Board-majority threw out the Governments on charges of their having engaged for years in a pattern of bad faith and willful obstructionism. The charges are false and contrary to the evidence; they merit the Commission's scrutiny.^{4/}

^{3/} Other Shoreham Boards also have issues pending before them: the 50-322-OL-5 Licensing Board chaired by Judge Frye has commenced the contention process on the 1988 Shoreham Exercise; the 50-322-OL-3 Appeal Board chaired by Judge Kohl is considering the Governments' appeal of LBP-88-13, the decision approving LILCO's relocation centers; the 50-322-OL-5 Appeal Board chaired by Judge Kohl is considering LILCO's appeal from LBP-88-2, the decision finding LILCO's plan fundamentally flawed; and the Commission is considering issues related to LILCO's proposals for protecting contaminated individuals.

^{4/} The Board-majority threw the Town of Southampton out of all Shoreham proceedings, but did not even charge the Town with any
(footnote continued)

- The Governments have participated in the Shoreham proceedings for years. They have painstakingly contributed to protecting public safety, at times even confronting the hostility of the Commission itself. Indeed, in May 1984 the Commission's hostile conduct required the Governments to obtain from the U.S. District Court an injunction prohibiting the NRC from further depriving the Governments of their constitutional rights.

- The Governments have also won significant victories for public safety before the appeal boards and licensing boards, including decisions that LILCO's 1986 exercise was unsatisfactory in scope and that its emergency plan and response capabilities were fundamentally flawed. The Governments would continue to litigate for public safety in the pending proceedings, if not for the Board-majority's decision.

- The situation presented by this case will never be paralleled. It is (1) the first time all affected

(footnote continued from previous page)
misconduct. Indeed, the Town was never even alleged to have withheld any discovery, the issue on which the OL-3 Board focused its sanctions ruling. Further, the Board-majority cited the State's failure to produce a particular document as evidence of misconduct, even though the request for that document was not directed to the State.

State and local governments have found it not possible to evacuate the public safely in the event of a nuclear accident; (2) the first time a utility emergency plan is being promoted to push aside the lawful decisions of State and local governments; (3) the first time the NRC is applying its new emergency planning rule; and (4) the first time elected governments have been thrown out of NRC proceedings.

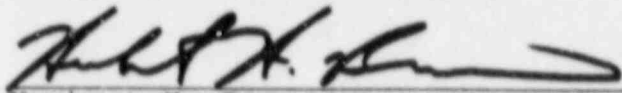
-- The results of LILCO's June 1988 exercise are pending before the OL-5 Licensing Board. But for the Board-majority's ouster of the Governments, the Governments would show that LILCO's performance was as inadequate in June 1988 as it was in 1986.

Surely, in these circumstances it is "in the public interest" for the Commission to stay the immediate effectiveness of the Board-majority's decision and to allow the NRC's appellate process to proceed. To assist the Commission in its immediate

effectiveness review, the Governments hereby request the opportunity to make a 30-minute presentation at a meeting of the Commission.

Respectfully submitted,

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LONG ISLAND LIGHTING COMPANY)

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CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY, NEW YORK STATE,
AND TOWN OF SOUTHAMPTON COMMENTS CONCERNING IMMEDIATE
EFFECTIVENSSES REVIEW have been served on the following this 3rd
day of October 1988 by U.S. mail, first class, except as
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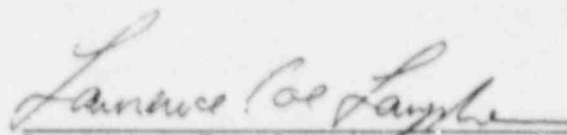
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